

ORDINANCE NO. 15073

**AN ORDINANCE PROVIDING FOR ART IN MUNICIPAL PLACES:
ESTABLISHING THE EL PASO PUBLIC ARTS COMMISSION AND DESCRIBING
ITS POWERS AND DUTIES; AND ESTABLISHING MEANS OF FUNDING
ACQUISITION OR COMMISSIONING OF ART FOR MUNICIPAL PLACES**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. PURPOSE.

The intent of this ordinance is to promote and encourage private and public programs to further the development and public awareness of, and interest in, the fine arts and cultural properties, to increase employment opportunities in the arts, to encourage the integration of art into the architecture of municipal structures for the City of El Paso ("the City"), and to provide for the citizens of the City high quality, publicly accessible works of art, which contribute to the urban landscape and symbolize the City's sense of place. Except as specifically provided for herein, this ordinance does not intend to establish any policies or procedures relative to the El Paso Public Library, the El Paso Museum of Art, Wilderness Park Museum, or El Paso History Museum.

SECTION 2. DEFINITIONS.

- A. "Acquisition" means the acquiring of works of art by purchase, exchange, or gift.
- B. "Arts Commission" means the El Paso Public Arts Commission established by this ordinance.
- C. "Capital Improvements Program" means all projects financed by general obligation bonds and revenue bonds.
- D. "Commission" means the appointment of an artist to the task of creating a work of art for a fee.

E. "Project" means any construction activity undertaken pursuant to the Capital Improvements Program.

F. "Program" means the plan for selection, approval, funding, acquisition, or commissioning of public works of art under this ordinance.

G. "Work of art" means any work of visual art, including but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching), works in clay, textile, fiber, wood, metal, plastic, glass, stone, concrete, and like materials, or mixed media (including a collage, assemblage, or any combination of the foregoing art media). For projects which involve no structures, "work of art" may include a combination of landscaping and landscape design (including some natural and manufactured materials such as rocks, fountains, reflecting pools, sculpture, screens, benches, and other types of street furniture). Except as provided herein, the term "work of art" does not include environmental landscaping or ephemeral arts such as dance, voice, music or poetry unless expressed in a manner defined above.

SECTION 3. EL PASO PUBLIC ARTS COMMISSION.

A. The El Paso Public Arts Commission is hereby established. It shall consist of eighteen (18) members to be appointed by the Mayor and the City Council. The initial Arts Commission shall not consist of persons who are presently members of the Arts Resources Board. Two (2) members of the Arts Commission shall be representatives of the construction industry. Three (3) members shall be representatives of the visual arts, two (2) of architecture, and two (2) of interior design disciplines, respectively. No members shall be appointed to the Arts Commission prior to the enactment of this ordinance. Upon the adoption of this ordinance, members of the Arts Commission shall be appointed to serve staggered terms: six (6) members

who shall serve for an initial term of three years, six (6) members who shall serve for an initial term of two years, and six (6) members who shall serve for an initial term of one year. The initial terms shall be established by lot at the first meeting of the Arts Commission following the date of this ordinance and shall run from the date of this ordinance. After the initial term, successors shall be appointed for three-year terms. Each term shall commence on the expiration date of the term of the immediate predecessor; provided, however, that appointments to vacancies occurring other than by expiration of a member's term of office shall be filled by appointment by the Council for the remainder of the unexpired term. The members of the Arts Commission shall be subject to Chapter 2.04 of the Municipal Code. Under the provisions of Chapter 2.04, members of the Arts Commission may not serve more than two consecutive three-year terms; provided, however, that the completion of an initial term of less than three years or the completion of the remainder of an unexpired term shall not be included in the calculation of a member's term for purposes of this provision.

B. Except as provided in this ordinance, the qualifications, appointment and conduct of the members of the Arts Commission and any of its sub-committees and the organizational structure of the Arts Commission and its sub-committees shall be governed by Title 2 of the El Paso Municipal Code.

C. Members of the Arts Commission shall be broadly representative of all fields of the fine arts and construction industry. They shall include persons who are widely known for their professional competence and experience in the arts and knowledgeable lay persons.

D. Conflict of Interest. This paragraph supplements the City's Ethics Ordinance, as codified in Chapter 2.92 of the El Paso Municipal Code. A Arts Commission or sub-committee member having a financial interest in the outcome of any policy, decision, or determination

before the Arts Commission or sub-committee on which the member serves shall, as soon as possible after such interest becomes apparent, disclose to each of the other members voting on the matter the nature of the financial interest in the issue, and such member shall be disqualified from participating in any debate, decision or vote relating thereto.

SECTION 4. POWERS AND DUTIES.

The Arts Commission shall promote and encourage private and public programs to further the development and public awareness of, and interest in the fine arts and cultural properties. In carrying out its duties and powers the Arts Commission shall perform the following:

1. Make recommendations to the City on the acquisition of works of art from funding sources other than the Capital Improvements Program for City-owned facilities, except the El Paso Public Library, the El Paso Museum of Art, Wilderness Park Museum, and El Paso Museum of History.

2. Make recommendations to the City for any work of art to be funded from the Capital Improvements Program as provided for in Section 5.A of this ordinance, including a work of art at the El Paso Public Library, the Museum of Art, Wilderness Park Museum, and Museum of History, recommend to the City Council an artist or a work of art to be chosen.

3. Advise the City with respect to the proposed removal, relocation or alteration of any public arts facility or works of art in the possession of the City, but which are not collections or exhibitions of the El Paso Public Library, the Museum of Art, Wilderness Park Museum, or Museum of History.

4. Make recommendations to the City on any arts program to be supported by the City other than those programs operated by the El Paso Public Library, the Museum of Art,

Wilderness Park Museum, and Museum of History.

5. Recommend to the City programs and facilities to further the development and public awareness of the fine arts, except programs or facilities for the El Paso Public Library, the Museum of Art, Wilderness Park Museum, and Museum of History.

6. Recommend, for approval by City Council, the establishment of a trust fund for funds which will be used for this municipal arts Program. The Arts Commission may also recommend the creation of a separate entity to seek private donations utilizing the name of this Program and may advise the City regarding additional sources of public funds for this Program; provided, however, that any such funding shall be subject to approval by City Council and to the City's financial review and control.

7. Recommend, for approval by City Council, such written regulations as are necessary to carry out the purpose of this ordinance. The regulations shall include, but not be limited to, criteria for selection of artists and works of art, maintenance of a file of interested artists, payment practices, procedures for artistic competitions, and requirements for the maintenance of works of art.

8. Establish a system of active coordination with the City's Capital Improvements Program and other building activities to ensure that works of art are properly integrated into the building environment at the earliest reasonable time in the planning process.

9. Establish sub-committees or ad hoc task forces to advise and assist the Arts Commission. Art Selection Committees may be established as sub-committees to the Arts Commission to recommend to the Arts Commission an artist or a work of art to be funded from the Capital Improvements Program as provided for in Section 5.A of this ordinance. Sub-committee and task force members shall be appointed by the Arts Commission for terms to be

specified by the Arts Commission.

10. Serve as an advisory board for such City arts or cultural properties and programs as directed by the Mayor.

SECTION 5. FUNDS FOR THE ACQUISITION OF ART FOR MUNICIPAL PROPERTY.

A. Projects in the Capital Improvements Program shall include an amount for works of art equal to two percent (2%) of the total funding available for the project; provided, however, that if the bond election ordinance, the bond ordinance authorizing revenue bonds, other appropriate laws or regulations, or an official interpretation by another governmental entity regarding allowable uses for funds which it is providing for the project precludes art as an expenditure of funds, the amount of funds so restricted shall be excluded from the total funding available in calculating the amount to be committed to works of art, and provided, further that those projects for which bonds have been approved prior to the effective date of this ordinance shall not be subject to the provisions hereof, regardless of whether such projects include a component for public art.

B. In order to ensure that works of art have sufficient public visibility and impact, funds generated from the various Capital Improvements Program projects may be pooled or aggregated together and utilized for one or more large works of art as the Arts Commission may recommend and upon approval by City Council.

C. Funds generated as described in Section 5.A above shall be budgeted as part of the Capital Improvements Program budget. Additional private or public contributions for works of art may be added to these funds and shall be budgeted in a similar manner. Such contributions may be earmarked for particular projects.

D. No more than fifteen percent (15%) of the total amount for works of art may be expended for the administrative costs of the Program. Examples of administrative costs shall include, but not be limited to, direct administrative costs of conducting a competition or search for a work of art, as well as staff and administrative support for the Arts Commission's activities on behalf of the Program as a whole and on behalf of an individual project; provided, however, that the cost of salary and benefits for the individual designated as liaison under Section 6.F. of this ordinance shall be calculated separately from, and shall not be subject to, the fifteen percent (15%) limitation on administrative costs.

E. If applicable, the Arts Commission shall recommend for Council approval the amount to be spent for works of art for each capital improvements project.

F. Progress payments may be made to the artist for works of art which have been chosen by the Arts Commission and Council. Such payments may reimburse the artist for the cost of materials or for services which have already been performed. At least twenty-five percent (25%) of the total amount to be paid to the artist shall not be disbursed to the artist until the work of art is formally accepted by the City.

G. Nothing contained herein shall preclude funding the acquisition of art for municipal property in other ways.

SECTION 6. SELECTION OF ART TO BE PURCHASED BY CAPITAL
IMPROVEMENTS PROGRAM FUNDS

A. In addition to regulations proposed by the Arts Commission and adopted by City Council pursuant to Section 4.7. above, the Arts Commission may recommend, for approval by City Council, such guidelines and timetables for selection as are deemed appropriate.

B. The work of art may be an integral part of a structure, attached to a structure or detached from the structure within or outside of it. It may also be located on municipal grounds

where there are not structures.

C. Any work of art which is chosen must comply with the following standards in addition to any regulations, guidelines, and timetables approved by City Council for the Program:

1. The work of art must be located in a public place with visibility and impact.

2. The work of art shall have a permanence at least comparable to the lifetime of the project and shall be likely to remain a thing of value for this time period.

3. The work of art shall enhance the environment of the City of El Paso.

D. The Arts Commission shall recommend an artist or a work of art to the City Council for each project for which a work of art is to be chosen. The Arts Commission may recommend purchasing a completed work of art, commissioning a work of art, holding a competition to select a work of art, or creating some other timely and appropriate mode of selection. The Arts Commission shall consult with the user agency and the project architect (if any) and involve them in the selection process in the manner that appears most feasible. The City Council may accept, reject, or modify the recommendation of the Arts Commission. If the City Council rejects the recommendation, the Arts Commission shall make another recommendation in accordance with the standards and procedures outlined in this ordinance.

E. The Arts Commission shall make its recommendations in a timely manner in accordance with the project schedule and timetable provided by the City. If the Arts Commission fails to make a recommendation within the timetable established by the City, the City may choose an artist or work of art without receiving a recommendation from the Arts Commission, unless the Arts Commission and the City Council have adopted a joint resolution authorizing an extension of the time period. The time period shall be extended, if necessary, if the City Council

rejects the Arts Commission's recommendation.

F. The City hereby designates the Arts Resources Department to provide appropriate staffing and administrative support for the Arts Commission and for projects undertaken pursuant to the Program. An individual within the Arts Resources Department shall be appointed as liaison to coordinate activities among the various City departments, the Arts Commission, and artists or others providing services under the Program.

SECTION 7. OWNERSHIP/MAINTENANCE OF WORKS OF ART.

The Arts Commission will request artists to include maintenance provisions in the artwork contract that stipulate the length of time (typically one year) the artists will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal rights on repair contracts with a fair-market rate of remuneration.

SECTION 8. APPLICABILITY.

This ordinance is not intended to amend any bond question submitted to the voters or any bond ordinance authorizing revenue bonds.

SECTION 9. SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance, and such remaining portions shall continue in effect. The City Council, the governing body of the City of El Paso, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise valid.

SECTION 10. COMPILING CLAUSE.

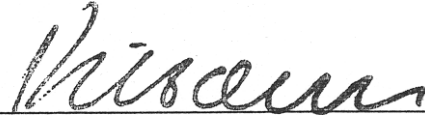
This ordinance shall be incorporated in and compiled as a part of the El Paso Municipal Code.

SECTION 11. EFFECTIVE DATE AND PUBLICATION.

This ordinance shall become effective immediately after approval.

PASSED AND APPROVED this 9th day of April, 2002.

THE CITY OF EL PASO




Raymond C. Caballero
Mayor

ATTEST:



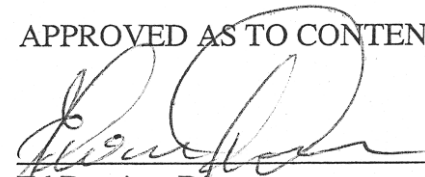
City Clerk

APPROVED AS TO FORM



John F. Nance
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APPROVED AS TO CONTENT:



Ed Drusina, Director
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